IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13395 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13395 of 2000

MR PH PATHAK for Petitioner No. 1

MR GORI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1-4,6

RULE SERVED for Respondent No. 5

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/08/2002

ORAL JUDGEMENT

The petitioner was serving as Senior Clerk with respondent No.5. His services came to be terminated in

the year 1989. He therefore, approached Gujarat Secondary Education Tribunal, Ahmedabad, by filing application No. 156/99. A settlement was arrived at between the parties and the petitioner came to be reinstated in service with continuity. The petitioner came to be reinstated in service, but wages for the period for which his services remained under termination were not paid. The petitioner therefore preferred an application before this Court for contempt. Following the proceedings, an order came to be passed by the DEO in 1994 and all backwages of the applicant came to be released and paid to him from the Government funds. The petitioner superannuated on 31st May, 1998. His case for pension, gratuity, provident fund etc. came to be processed and an order came to be passed by the office of Pension Provident Fund (Annexure "D"). While computing pension, the period during which the petitioner's services remained terminated has not been considered and therefore, pensionable service was computed at 17 years and non-pensionable services was computed for 4 years and 21 days. This has agitated the petitioner and he is therefore before this Court. The petitioner prays that when he is reinstated in service with continuity and even backwages have been paid by the Government, his service ought to have been counted as continuous while computing pensionable service and the period during which his services remained terminated ought to have been considered since that termination no more remains effective, as the petitioner is reinstated in service with continuity.

2. The Tribunal in Application No. 156/99, by order dated August 10, 1999, directed the Department to pass appropriate orders keeping in view the period for which the applicant remained under termination is treated as on duty, in view of the settlement arrived at between the parties and also in view of the order of the High Court pursuant to which the applicant has been paid his full salaries for the said period from the Government funds. The Tribunal also directed the Department to forthwith clarify this point with the Pension Provident Fund Director, which would enable the said office to process the case of the applicant faster.

3. Learned Advocate Mr. Pathak appearing for the petitioner has reiterated the above grounds and has prayed that action of the respondent authorities in computing pensionable service of the petitioner for 17 years only is illegal, unjust and arbitrary and therefore, may be quashed and be directed that the services could be computed 21 years. He has submitted

that for delayed payment, interest also may be awarded.

4. Learned AGP Mr. Gori submitted that the period between 1989-1994 during which the petitioner did not work because of terminationof his service cannot be computed while computing pensionable service and the prayer therefore may not be granted.

5. Having heard learned Advocate for the parties, at the out-set it may be noted that no specific direction is required to be given by this Court in favour of the petitioner, as the same is already granted by the Gujarat Secondary Education Tribunal in Application No. 156/99 by order dated August 10, 1999. It is not in dispute that the said order is not subject matter of challenge anywhere and none of the parties have approached any higher forum against that order. The order has therefore attained finality. All that is required to be done by this Court is to once again direct the respondents to follow the instructions of the Tribunal issued in the oral judgement dated August 10, 1999 while disposing of application No. 156/99 (Annexure "A"). This would take care of the reliefs sought by the petitioner. So far as interest part is concerned, this Court expresses no opinion on it at this stage. The respondent authorities are directed to implement the order of the Tribunal as stated above as early as possible, preferably within eight weeks from the date of receipt of the order. The petition is allowed accordingly. Rule made absolute. No costs.

(A.L.Dave, J.)

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